responsible, and so should pay, for the safety space. Nonetheless, an acceptable compromise is that the safety space be attributed to common or non-usable space on the pole. The least that can be said is that, as all benefit from safety space, so all should pay for its cost.

Grounding Equipment and Lightening Arrestors Benefit Attaching Entities and Must be Assessed to Them

Commenters raised two arguments against including these costs in the calculation of pole rates. Time Warner (at 20) protests that utilities were always free to make an individual case for inclusion of these costs, but have failed to so because there is no valid information to demonstrate their investment. NCTA (at 20) asserts that attaching entities have similar equipment and should not pay any portion of such utility-owned facilities. Neither of these two arguments is valid, and the various utility comments demonstrate that all grounding equipment and lightening arrestors (FERC Accounts 365 and 368) benefit attaching entities.

Utilities clearly have complete records of the relevant costs (see, e.g., EC at 47). But, as we noted in our initial comments, the Commission has never been receptive enough to individual showings demonstrating a need to modify the attachment formula. In that environment, recovery of the costs involved would not justify the expense of the attempt in individual rate cases. However, this is a generic proceeding, and it is extremely

important that all relevant costs be included in any formula, if the Commission adopts a formulaic approach.

It is irrelevant that attaching entities have similar equipment. Their investment in such equipment is far less than it otherwise would have been due to the utility equipment. Utility equipment alone may be insufficient to fully protect the equipment of attaching entities, but all utility facility above the communications space affords a certain degree of protection, even absent investment in specific lightening and grounding equipment. For instance, and at the very least, attached cables benefit from the 60 degrees of protection afforded by all lines above their own (see, EC at 47). Absent just that protection, the lightening and grounding needs of attaching entities would be far higher.

Moreover, the utility equipment at issue is completely sufficient to protect the poles themselves (see UG at 59-60). The equipment of attaching entities is sufficient only for the protection of their own attached facilities. Again, absent the protection afforded to the poles by utilities, the lightening and grounding needs of attaching entities would be far higher.

Finally, NCTA asserts (at 20) that the definitions of the FERC Accounts demonstrate that lightening and grounding equipment benefit only utility equipment. However, that argument misses the point entirely. The definitions for the Accounts relate to FERC's own regulatory need for similarity in accounting practices among utilities. The definitions were not intended to address the question of who derived a benefit from the costs recorded. In

particular, they were created without any consideration of any of the issues related to pole attachments (see EC at 13).

CONCLUSION

As we stated in our initial comments, (1) the Commission must not impose regulation where markets are robust; (2) the Commission must allow those markets to efficiently allocate resources and determine value; (3) the Commission must recognize and honor pre-existing contractual arrangements; and (4) the Commission must allow facility owners to recover all expenses related to the provision of facilities for attachment by telecommunication equipment.

WHEREFORE, THE PREMISES CONSIDERED, EEI and UTC request the Federal Communications Commission to take action in this proceeding in accordance with the views expressed in these comments.

Respectfully submitted,

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